



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2006-24278; FMCSA-2006-25854; FMCSA-2008-0355; FMCSA-2010-0203; FMCSA-2011-0089]**

**Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the Epilepsy and Seizure Disorders requirement in the Federal Motor Carrier Safety Regulations for 9 individuals. FMCSA has statutory authority to exempt individuals from the Epilepsy and Seizure Disorders requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective December 1, 2014. Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: **Docket No. [Docket No. FMCSA-2006-24278; FMCSA-2006-25854; FMCSA-2008-0355; FMCSA-2010-0203; FMCSA-2011-0089]**, using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

### **C. Privacy Act**

In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including

any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs Division, 202-366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue, S.E., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the Epilepsy and Seizure Disorders requirements in 49 CFR 391.41(b)(8), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

### **Exemption Decision**

This notice addresses 9 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Daniel Forth (NY)	Steven L. Hunsaker (ID)
Henrietta M. Ketcham (NY)	Shane Klementis (NY)
Robin L. Sherwood (ID)	Wayne C. Sorensen (MN)
Michael W. Thomas (KS)	Paul C. Warren (ME)
John B. Yates (WV)	

These exemptions are extended subject to the driver maintaining a stable treatment regimen and remaining seizure-free during the 2-year exemption period. The exempted drivers must submit a physician statement from their treating physician attesting to the stability of treatment and that the driver has remained seizure-free. The driver must undergo an annual medical examination by a medical examiner, as defined by 49 CFR 390.5, following the FCMSA's regulations for the physical qualifications for CMV drivers. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

#### **Basis for Renewing Exemptions**

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 9 applicants has satisfied the entry conditions for obtaining an exemption from the Epilepsy and Seizure Disorder requirements (71 FR 60606; 72 FR 44916; 73 FR 75165; 75 FR 38599;

76 FR 18822). Each of these 9 applicants has requested renewal of the exemption and has submitted evidence showing that they have maintained a stable treatment regimen and remained seizure-free during the 2-year exemption period. The exempted drivers must submit a physician statement from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free. The driver must undergo an annual medical examination by a medical examiner, as defined by 49 CFR 390.5, following the FMCSA's regulations for the physical qualifications for CMV drivers. In addition to evaluating the medical status of each applicant CDLIS and MCMIS were searched for crash and violation data on the 9 applicants. For non-CDL holders, the Agency reviewed the driving records from the State licensing agency. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

### **Request for Comments**

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by [Insert date 30 days from the date of publication in the FEDERAL REGISTER].

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested

parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 9 individuals from the Epilepsy and Seizure Disorders requirement in 49 CFR 391.41(b)(8). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated the medical condition of each applicant for an exemption from the Epilepsy and Seizure requirements. That information is available by consulting the above cited Federal Register publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

### **Submitting Comments**

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket numbers FMCSA-2006-24278; FMCSA-2006-25854; FMCSA-2008-0355; FMCSA-2010-0203; FMCSA-2011-0089 and click the search

button. When the new screen appears, click on the blue “Comment Now!” button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

### **Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this notice, or to submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA-2006-24278; FMCSA-2006-25854; FMCSA-2008-0355; FMCSA-2010-0203; FMCSA-2011-0089 and click “Search.” Next, click “Open Docket Folder” and you will find all documents and comments related to this document.

Issued on: December 4, 2014

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Larry W. Minor  
Associate Administrator for Policy

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